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COUNTY OF LOS ANGELES, BONDELL GOLDEN, DENNIS BURNS, and  
MARVIN CAVANAUGH

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DESMOND CARTER,  
Plaintiff,  
vs.  
COUNTY OF LOS ANGELES; A  
POLITICAL SUBDIVISION OF THE  
STATE OF CALIFORNIA; BONDELL  
GOLDEN, an individual, DENNIS BURNS,  
an individual; MARVIN CAVANAUGH, an  
individual; AND DOES 1 THRU 10  
inclusive,  
Defendants. }  
Case No.: CV-11-5543-JHN  
(SSx)  
ANSWER OF DEFENDANTS  
COUNTY OF LOS  
ANGELES, BONDELL  
GOLDEN, DENNIS BURNS,  
AND MARVIN CAVANAUGH  
TO PLAINTIFF'S  
COMPLAINT; DEMAND  
FOR JURY TRIAL  
Complaint filed: July 6, 2011

Defendants COUNTY OF LOS ANGELES, BONDELL GOLDEN, DENNIS BURNS, and MARVIN CAVANAUGH answering Plaintiff's Complaint filed on July 6, 2011, admit, deny and allege as follows:

1. Answering paragraph 1, defendants deny the allegations contained therein.

2. Answering paragraph 2, defendants deny the allegations contained therein

3. Answering paragraph 3, defendants admit the allegations contained

1 therein.

2 4. Answering paragraph 4, defendants admit the allegations contained  
3 therein.

4 5. Answering paragraph 5, defendants deny the allegations contained  
5 therein.

6 6. Answering paragraph 6, defendants lack sufficient information and  
7 belief upon which to answer the allegations contained therein, and on that basis deny  
8 the allegations.

9 7. Answering paragraph 7, this is a restatement of law and/or argument. No  
10 factual allegations are made therein, and on that basis the paragraph goes  
11 unanswered.

12 8. Answering paragraph 8, this is a restatement of law and/or argument. No  
13 factual allegations are made therein, and on that basis the paragraph goes  
14 unanswered. Defendants deny and depravation of plaintiff's rights occurred.

15 9. Answering paragraph 9, this is a restatement of law and/or argument. No  
16 factual allegations are made therein, and on that basis the paragraph goes  
17 unanswered.

18 10. Answering paragraph 10, this is a restatement of law and/or argument.  
19 No factual allegations are made therein, and on that basis the paragraph goes  
20 unanswered.

21 11. Answering paragraph 11, this is a restatement of law and/or argument.  
22 No factual allegations are made therein, and on that basis the paragraph goes  
23 unanswered.

24 12. Answering paragraph 12, defendants deny the allegations contained  
25 therein.

26 13. Answering paragraph 13, defendants deny the allegations contained  
27 therein.

28 14. Answering paragraph 14, defendants deny the allegations contained

1 therein.

2 15. Answering paragraph 15, defendants deny the allegations contained  
3 therein.

4 16. Answering paragraph 16, defendants lack sufficient information and  
5 belief upon which to answer the allegations contained therein, and on that basis deny  
6 the allegations.

7 17. Answering paragraph 17, defendants lack sufficient information and  
8 belief upon which to answer the allegations contained therein, and on that basis deny  
9 the allegations.

10 18. Answering paragraph 18, defendants deny the allegations contained  
11 therein. However, defendants admit a letter was sent to plaintiff on September 3,  
12 2010, notifying him of his discharge.

13 19. Answering paragraph 19, which incorporates by reference the  
14 allegations of other paragraphs of the pleading, defendants to the same extent  
15 incorporate by reference the answers provided herein to those paragraphs.

16 20. Answering paragraph 20, defendants deny the allegations contained  
17 therein.

18 21. Answering paragraph 21, defendants deny the allegations contained  
19 therein.

20 22. Answering paragraph 22, defendants deny the allegations contained  
21 therein.

22 23. Answering paragraph 23, defendants deny the allegations contained  
23 therein.

24 24. Answering paragraph 24, defendants deny the allegations contained  
25 therein.

26 25. Answering paragraph 25, defendants deny the allegations contained  
27 therein.

28 26. Answering paragraph 26, defendants deny the allegations contained

1 therein.

2 27. Answering paragraph 27, defendants deny the allegations contained  
3 therein.

4 28. Answering paragraph 28, defendants deny the allegations contained  
5 therein.

6 29. Answering paragraph 29, defendants deny the allegations contained  
7 therein.

8 30. Answering paragraph 30, defendants deny the allegations contained  
9 therein.

10 **FIRST AFFIRMATIVE DEFENSE**

11 The complaint fails to state a cause of action against defendants COUNTY OF  
12 LOS ANGELES, BONDELL GOLDEN, DENNIS BURNS, and MARVIN  
13 CAVANAUGH.

14 **SECOND AFFIRMATIVE DEFENSE**

15 Plaintiff has failed to mitigate the damages, if any, which plaintiff has  
16 sustained, and to exercise reasonable care to avoid the consequences of harms, if any,  
17 in that, among other things, plaintiff has failed to use reasonable diligence and to  
18 take reasonable steps to reduce any damages.

19 **THIRD AFFIRMATIVE DEFENSE**

20 Plaintiff's recovery is barred for failure to timely comply with the provisions  
21 of the claims statutes, including, but not limited to, Government Code sections 901,  
22 905, 905.2, 911.2, 945.4 and/or 946.6.

23 **FOURTH AFFIRMATIVE DEFENSE**

24 The plaintiff's recovery is barred because public entities and employees are  
25 immune from liability for any act or omission while exercising due care in the  
26 execution or enforcement of any law.

27 **FIFTH AFFIRMATIVE DEFENSE**

28 The complaint fails to set forth facts sufficient to constitute a cause of action

1 for punitive damages because a public entity is immune from liability for damages  
2 awarded under Civil Code section 3294 or other damages imposed primarily for the  
3 sake of example and by way of punishing the defendant.

4 **SIXTH AFFIRMATIVE DEFENSE**

5 The complaint fails to set forth facts sufficient to constitute a cause of action  
6 for punitive damages because a peace officer is not liable for punitive damages  
7 absent clear and convincing proof of malice, oppression or reckless disregard for  
8 plaintiff's rights.

9 **SEVENTH AFFIRMATIVE DEFENSE**

10 The plaintiff's claim for emotional distress is barred because defendant had no  
11 knowledge of plaintiff's susceptibility to emotional distress and plaintiff alleged no  
12 more than that which a reasonable person would have been able to adequately cope.

13 **EIGHTH AFFIRMATIVE DEFENSE**

14 The plaintiff's claim under the Federal Civil Rights Act is barred because  
15 common law causes of action do not constitute cognizable claims under 42 U.S.C. §  
16 1983.

17 **NINTH AFFIRMATIVE DEFENSE**

18 The plaintiff's claim under the Federal Civil Rights Act is barred because the  
19 complaint fails to allege facts that go beyond mere tortious conduct and rise to the  
20 dignity of a civil rights violation.

21 **TENTH AFFIRMATIVE DEFENSE**

22 These peace officer defendants are immune from liability for plaintiff's federal  
23 civil rights claims based upon qualified immunity because they did not violate  
24 plaintiff's constitutional rights, and even if plaintiff's rights were violated, they were  
25 not clearly established at the time such that a reasonable peace officer would know  
26 his or her actions were wrongful.

27 **ELEVENTH AFFIRMATIVE DEFENSE**

28 That at no time and place mentioned in the Complaint, did Defendants deprive

1 Plaintiff of any right, privilege, or immunity guaranteed by the Constitution or laws  
2 of the United States and, therefore, Defendants are immune from liability.

3 **TWELFTH AFFIRMATIVE DEFENSE**

4 Any state law claims are barred by Plaintiff's failure to comply with the  
5 Government Tort claims presentation requirements, Government Code § § 900, et  
6 seq., including, but not limited to §§ 900, 900.4, 901, 905, 905.2, 910, 911, 911.2,  
7 911.4, 945.4, 945.6, 946.6, 950.2 and 950.6.

8 **THIRTEENTH AFFIRMATIVE DEFENSE**

9 That a public employee may not be held liable for injuries or damages, if any,  
10 caused by failure to adopt or by adoption of an enactment or by failure to enforce an  
11 enactment and/or law, for an injury caused by his issuance, denial, suspension or  
12 revocation or by his failure or refusal to issue, deny, suspend or revoke, any permit,  
13 license, certificate, approval, order, or similar authorization, where he is authorized  
14 by enactment to determine whether or not such authorization should be issued,  
15 denied, suspended or revoked, pursuant to Government Code, Sections 818.2, 818.4,  
16 818.8, 821 and 821.2. Based thereon, Defendants are immune from liability for any  
17 injuries claimed by Plaintiff, herein.

18 **FOURTEENTH AFFIRMATIVE DEFENSE**

19 There may not be liability for any alleged civil rights violation committed by  
20 Defendant(s) and/or their subordinates, absent a showing that the violation was  
21 committed pursuant to an official policy or custom enacted or maintained by  
22 Defendants. *Monell v. Department of Social Services of the City of New York*,  
23 (1978) 436 U.S. 658. Defendants deny that Plaintiff was deprived of any civil right  
24 as a result of any official policy, custom or practice tolerated by these Defendants.

25 **FIFTEENTH AFFIRMATIVE DEFENSE**

26 Plaintiff's recovery is barred because plaintiff failed to exhaust his  
27 administrative remedies.

28

## SIXTEENTH AFFIRMATIVE DEFENSE

The causes of action alleged in the complaint are barred by the applicable statutes of limitations, including, but not limited to the provisions of Code of Civil Procedure sections 337, 337.1, 337.15, 338(1), 338(2), 338(4), 339, 340(3) and/or 343.

## SEVENTEENTH AFFIRMATIVE DEFENSE

Because the Complaint is couched in conclusory terms, answering Defendants cannot fully anticipate all affirmative defenses that may be applicable to this action. Accordingly, the right to assert additional affirmative defenses, if and to the extent that such affirmative defenses are applicable, is hereby reserved.

WHEREFORE defendants COUNTY OF LOS ANGELES, BONDELL GOLDEN, DENNIS BURNS, and MARVIN CAVANAUGH, pray that plaintiff take nothing by this action and that defendants be awarded costs and all other just relief.

Dated: August 29, 2011

MANNING & KASS  
ELLROD, RAMIREZ, TRESTER LLP

By: /s/  
Michelle B. Ghaltchi

Attorneys for Defendants,  
COUNTY OF LOS ANGELES,  
BONDELL GOLDEN, DENNIS  
BURNS, MARVIN CAVANAUGH

1  
2                   **DEMAND FOR JURY TRIAL**  
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5  
6 Defendants COUNTY OF LOS ANGELES, BONDELL GOLDEN, DENNIS  
7 BURNS, and MARVIN CAVANAUGH, hereby demand trial of this matter by jury  
8 pursuant to Federal Rules of Civil Procedure, Rule 38(b) and Local Rule 38-1.  
9

10 Dated: August 29, 2011

11                   **MANNING & KASS**  
12                   **ELLROD, RAMIREZ, TRESTER LLP**

13                   By: /s/  
14                   Michelle B. Ghaltchi

15                   Attorneys for Defendants,  
16                   COUNTY OF LOS ANGELES,  
17                   BONDELL GOLDEN, DENNIS  
18                   BURNS, MARVIN CAVANAUGH

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